

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

SOLPAC, INC. d/b/a SOLTEK PACIFIC¹

Employer

and

Case 19-RC-14090

LABORERS LOCAL 242, WASHINGTON &
NORTHERN IDAHO DISTRICT COUNCIL
OF LABORERS, LABORERS INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time laborers employed by the employer at its West Seattle High School project, located at 3000 California Avenue Southwest, Seattle, Washington; but excluding all

¹ The name of the Employer appears as corrected at hearing.

² The name of Petitioner appears as corrected at hearing.

³ The Employer filed a brief, which has been considered.

office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The Employer is engaged in general contracting on a construction project ("the Project") at West Seattle High School, at 3000 California Avenue Southwest, Seattle, Washington. Petitioner seeks a unit of all full-time and regular part-time laborers employed on the Project. The Employer stipulated that the unit sought is an appropriate unit, but contended that no election should be conducted and the petition should be dismissed because the Project will be completed in July 2002.

The parties stipulated that the Project is scheduled for final completion on July 16, 2002. Petitioner proposed an alternative unit, in the event that the Employer's contention prevailed, of all full-time and regular part-time laborers employed by the Employer on all of the Employer's projects located in the counties in Washington State west of the Cascade Crest. The Employer contended that such unit is inappropriate. The hearing officer deferred the taking of evidence on the appropriateness of Petitioner's alternative unit until the appropriateness of the unit sought in the petition had been decided.

With respect to the unit sought in the petition, in support of its "too late" contention, the Employer cites *Longcrier Company*, 277 NLRB 570 (1985) and *M. B. Kahn Construction Co., Inc.*, 210 NLRB 1050 (1974). In *Longcrier*, a hearing was held on December 1, 1983, and an election was conducted on January 20, 1984, with the ballots impounded. On November 20, 1985, following a grant of a Request for Review, the Board made unit findings different from those of the Regional Director, and ordered the election vacated. In addition, because the evidence in the record demonstrated that all of the employer's existing projects would have been completed by January 1985, the Board found that no purpose would be served by conducting any further election, and dismissed the petition. Thus, at the time the Board dismissed the petition, there had been no project in existence and no unit employees employed for about ten months. In *Kahn*, a hearing was held in December 1973; the unit, according to the record, was expected to cease to exist by June 1974. When the Board finally addressed the issue in May, 1974, there was then only one month left for the project. Based on that circumstance, the Board dismissed the petition.

Thus, Employer's reliance on these cases is misplaced. There was no finding in *Longcrier* that ten or 13 pre-completion months were insufficient time for an election to be conducted and meaningful collective bargaining to occur; rather, at the time the Board finally issued its decision, the Board determined it would then be futile to direct an election as the employer's operations had already ceased. Likewise, in *Kahn*, there was no finding by the Board that the seven to eight pre-completion months following the representation hearing were insufficient; rather, the Board found that the one month remaining after it issued its decision was insufficient.

In *Norfolk Maintenance Corporation*, 310 NLRB 527 (1993), the Board upheld the Regional Director's direction of an election where the unit would cease to exist seven months after the issuance of the Regional Director's decision.

Here, the West Seattle High School project will not be completed until more than a year after this decision issues. Clearly a year is sufficient time in which to conduct an election and for meaningful bargaining to occur. Accordingly, I shall direct an election.

At hearing, the parties stipulated that the *Steiny/Daniels*⁴ formula for eligibility in construction industry cases *not* be used in this case.

There are approximately 13 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by LABORERS LOCAL 242, WASHINGTON & NORTHERN IDAHO DISTRICT COUNCIL OF LABORERS, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v.*

⁴ *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction Co.*, 133 NLRB 264 (1961), as modified in 167 NLRB 1078 (1967).

Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, by the close of business on or before May 16, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 23, 2001

DATED this 9th day of May, 2001.

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

347-8020-8050